IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9152 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? No :

TALUKA DEVLOPMENT OFFICER

Versus

BHARATKUMAR JAYANTILAL DAVE

Appearance:

1. Special Civil Application No. 9152 of 1993

NOTICE SERVED for Petitioner

MR PH PATHAK for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 13/01/2003

ORAL JUDGEMENT

By filing instant petition under Article 227 of the Constitution, the petitioner i.e. Taluka Development

Officer, Taluka : Kalol, District : Mehsana, has challenged legality of Award dated November 26, 1992 rendered by the Labour Court,Kalol, in Reference (LCK) No. 131/1988, by which the petitioner is directed to reinstate the respondent in service without back wages. The petitioner has further prayed to quash order dated April 15, 1993 passed by the Labour Court, Kalol, in Review Application No.1/1993, by which prayer to review the Award dated November 26, 1992 passed by the Labour Court in Reference (LCK) No.131/1988 has been rejected.

2. The respondent was employed by the petitioner as Site Supervisor since January 17, 1984. According to him, he was drawing wages of Rs. 800/- per month. His services were abruptly terminated orally on March 31, 1987. Therefore, he had raised dispute regarding legality of action of the petitioner in terminating his services orally. On failure of conciliation proceedings, the dispute was referred to the Labour Court, Kalol for adjudication, where it was numbered as Reference (LCK) No.131/1988. The respondent had submitted his Statement of Claim to which the petitioner had filed reply at Exh.15. The respondent had examined himself on oath at Exh.10; whereas on behalf of the petitioner, Mr.Kishan Govindram Jani was examined at Exh.28 and Mr.Mohanbhai Kodarbhai Sutaria was examined at Exh.29. On appreciation of evidence adduced by the parties, the Labour Court concluded that the action of the petitioner of terminating the services of the respondent was illegal. The Labour Court, therefore, by Award dated November 26, 1992 directed the petitioner to reinstate the respondent in service without back wages. Thereupon the petitioner filed Review Application No.1/1993 for reviewing the Award passed by the Labour Court. The Review Application was rejected by the Labour Court vide order dated April 15, 1993, giving rise to the present petition.

3. The learned advocate representing the petitioner has been elevated as a Judge of the High Court. Thereupon, a notice was issued to the petitioner calling upon him to make necessary arrangement for his appearance either in person or through a lawyer. Though the notice is duly served, the petitioner has neither made arrangement for his appearance through a lawyer nor appeared in person. It may be stated that the matter is old one and has been listed on nine different occasions for final hearing. Under the circumstances, I have heard Mr. P.H.Pathak, learned counsel for the respondent, and considered the documents forming part of the petition. The respondent in his deposition before the Labour Court

has categorically stated that he was not given one month's notice in writing indicating the reasons for retrenchment nor was paid wages for the period of the notice in lieu of such notice. He has also stated that he was not paid retrenchment compensation at the time of retrenchment. This position is admitted by Mr.Mohanbhai Kodarbhai Sutaria, who was examined on behalf of the petitioner at Exh.29. Mr. Sutaria has stated in his deposition that one month's notice in writing indicating the reasons for retrenchment was not given to the respondent nor the workman was paid, in lieu of the said notice, wages for the period of the notice nor the workman was paid retrenchment compensation. Thus, there is no manner of doubt that before effecting retrenchment of the respondent, the petitioner had not complied with the provisions of Section 25F of the Industrial Disputes Act, 1947. Under the circumstances, the direction given by the Labour Court to the petitioner to reinstate the respondent in service without back wages, can hardly be regarded as illegal so as to warrant interference of this Court in the present petition which is filed under Article 227 of the Constitution. No error apparent on the face of the record was committed by the Labour Court in directing the petitioner to reinstate the respondent in service without back wages and, therefore, the Labour Court was justified in rejecting the Review Application submitted by the petitioner. Thus, the order passed by the Labour Court on Review Application is also not liable to be interfered with by the Court in the present petition.

4. Mr. P.H.Pathak, learned advocate of the respondent, has stated at the Bar that pursuant to the direction given by the Labour Court to reinstate the respondent in service without back wages, the petitioner was reinstated in service, but his services were terminated on the next day and, therefore, another dispute was raised by the respondent and the Labour Court, Kalol by Award dated May 31, 2002 passed in Reference (LCK) No.97/1996 has directed the petitioner to reinstate the respondent in service with 70% back wages and that the said Award has not been challenged by the petitioner. Be that as it may, the fact remains that the petitioner has failed to point out any error apparent on the face of the record in the Award passed by the Labour Court, which is impugned in the present petition or the order by which the prayer to review the Award was rejected. The petition is, therefore, liable to be dismissed.

For the foregoing reasons, the petition fails and

is dismissed. Rule is discharged. There shall be no order as to costs. Interim relief, if any, shall stand vacated.

(J.M.Panchal,J.)

(patel)